

UNITED STATES OF AMERICA

**BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01 - SUBREGION 34**

Springfield Symphony Orchestra, Inc.,

Respondent

and

American Federation of Musicians, Local 171,

Charging Party

Case No. 01-CA-297241

RESPONDENT’S ANSWER TO THE COMPLAINT

Respondent, Springfield Symphony Orchestra, Inc. (“Respondent”), by its attorneys, Proskauer Rose LLP, files this Answer in the above-captioned matter in response to the Complaint and Notice of Hearing, dated January 13, 2023 (“Complaint”), as follows:

To the extent that the introductory paragraph that appears before Paragraph 1 of the Complaint forms part of the allegations of the Complaint and, therefore, requires a response, Respondent admits that the American Federation of Musicians, Local 171 (hereinafter, the “Charging Party”) has filed an unfair labor practice charge that alleges the Respondent has violated the National Labor Relations Act (the “NLRA” or “Act”), but denies knowledge or information sufficient to form a belief as to the remaining allegations set forth in the introductory paragraph of the Complaint.

1. Respondent denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 1 of the Complaint, except admits that the unfair labor practice charge in Case No. 01-CA-297241 was filed and served on Respondent.

2. Respondent denies the allegations in Paragraph 2 of the Complaint with respect to the use of the phrase “[a]t all material times,” except admits that it is currently a non-profit corporation that engages in operating a symphony orchestra, and that its principal place of business is in Springfield, Massachusetts.
3.
 - (a) To the extent Paragraph 3(a) of the Complaint incorporates the allegations in Paragraph 2 of the Complaint, Respondent incorporates its answer to Paragraph 2 of the Complaint herein. Respondent denies the allegations in Paragraph 3(a) of the Complaint with respect to the use of the term “[a]nnually,” except admits the allegations in Paragraph 3(a) of the Complaint as to the 2022 calendar year.
 - (b) To the extent Paragraph 3(b) of the Complaint incorporates the allegations in Paragraph 2 of the Complaint, Respondent incorporates its answer to Paragraph 2 of the Complaint herein. Respondent denies the allegations in Paragraph 3(b) of the Complaint with respect to the use of the term “[a]nnually,” except admits the allegations in Paragraph 3(b) of the Complaint as to the 2022 calendar year.
4. Respondent denies the allegations in Paragraph 4 of the Complaint with respect to the use of the phrase “[a]t all material times,” except admits the allegations in Paragraph 4 of the Complaint as to the 2022 calendar year.
5. The allegations set forth in Paragraph 5 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, Respondent denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 5 of the Complaint.
6. Respondent denies the allegations in Paragraph 6 of the Complaint with respect to the use of the phrase “[a]t all material times” and states that the remainder of the

allegations contain legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations set forth in Paragraph 6 of the Complaint, except admits that (b) (6), (b) (7)(C) previously held the position of (b) (6), (b) (7)(C) for Respondent, (b) (6), current role is (b) (6), (b) (7)(C) for Respondent, and (b) (6) is currently a supervisor within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

7. Respondent denies the allegations in Paragraph 7 of the Complaint with respect to the use of the phrase “[a]t all material times” and states that the remainder of the allegations contain legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations set forth in Paragraph 7 of the Complaint, except admits that the individuals listed in Paragraph 7 of the Complaint have served or currently serve as (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) for Respondent.
8. Respondent denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 8 of the Complaint.
9. Respondent admits the allegations in Paragraph 9 of the Complaint.
10. Respondent denies the allegations in Paragraph 10 of the Complaint with respect to the use of the phrase “[a]t all material times” and states that the remainder of the allegations contain legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations set forth in Paragraph 10 of the Complaint, except admits that Respondent has had a series of collective bargaining agreements with the Charging Party, and that the most

recent collective bargaining agreement was effective from September 1, 2017 through August 31, 2020.

11. Respondent denies the allegations in Paragraph 11 of the Complaint with respect to the use of the phrase “[a]t all material times” and states that the remainder of the allegations contain legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations set forth in Paragraph 11 of the Complaint.
12. The allegations in Paragraph 12 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations in Paragraph 12 of the Complaint.
13. To the extent Paragraph 13 of the Complaint incorporates the allegations in Paragraph 12 of the Complaint, Respondent incorporates its answer to Paragraph 12 of the Complaint herein. The allegations in Paragraph 13 of the Complaint otherwise contain legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations in Paragraph 13 of the Complaint.
14. To the extent Paragraph 14 of the Complaint incorporates the allegations in Paragraph 12 of the Complaint, Respondent incorporates its answer to Paragraph 12 of the Complaint herein. The allegations in Paragraph 14 of the Complaint otherwise contain legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations in Paragraph 14 of the Complaint.

15. To the extent Paragraph 15 of the Complaint incorporates the allegations in Paragraphs 12 and 14 of the Complaint, Respondent incorporates its answers to Paragraphs 12 and 14 of the Complaint herein. The allegations in Paragraph 15 of the Complaint otherwise contain legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations in Paragraph 15 of the Complaint.
16. To the extent Paragraph 16 of the Complaint incorporates other allegations set forth in the Complaint, Respondent incorporates its answer(s) to those allegations herein. The allegations in Paragraph 16 of the Complaint otherwise contain legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations in Paragraph 16 of the Complaint.

RESPONDENT'S AFFIRMATIVE AND OTHER DEFENSES

AS AND FOR A FIRST DEFENSE

The allegations contained in the Complaint fail to state sufficient facts to constitute a claim upon which relief can be granted under the National Labor Relations Act, as amended.

AS AND FOR A SECOND DEFENSE

Respondent has not engaged in nor is engaging in any unfair labor practices as alleged in the Complaint.

AS AND FOR A THIRD DEFENSE

Respondent acted lawfully because the parties had reached a valid, good-faith impasse in their negotiations.

AS AND FOR A FOURTH DEFENSE

The Charging Party has taken action to compete with Respondent in providing orchestral music to the public through an entity called the Musicians of the Springfield Symphony Orchestra (“MOSSO”), and thus the Charging Party has a conflict of interest that prevents the Charging Party from serving as a valid collective bargaining representative of Respondent’s musicians. Accordingly, Respondent had no duty to negotiate with the Charging Party on or prior to June 7, 2022, and the Complaint should be dismissed.

AS AND FOR A FIFTH DEFENSE

The Charging Party failed to bargain in good faith pursuant, including, but not limited to, the Charging Party’s insistence on permissive subjects of bargaining, engagement in dilatory bargaining tactics, and obstruction of the negotiations. The Charging Party’s conduct permitted Respondent to unilaterally implement its last offer on June 7, 2022.

Respondent reserves the right to assert additional affirmative and other defenses as they become known.

WHEREFORE, Respondent respectfully demands that the Complaint be dismissed in its entirety.

Dated: Boston, Massachusetts
January 27, 2023

PROSKAUER ROSE LLP

By: /s/ Mark Batten
Mark Batten
One International Place
Boston, MA 02110-2600
Tel: (617) 526-9850
Fax: (617) 526-9899
mbatten@proskauer.com

Michael Lebowich
Joshua Fox
11 Times Square
New York, NY 10036
Tel: (212) 969-3000
Fax: (212) 969-2900
mlebowich@proskauer.com
jfox@proskauer.com

Attorneys for Respondent